Filed 6/11/07 In re Marr. of Fernandez CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of TONYA AND MARCO A. FERNANDEZ.	
TONYA FERNANDEZ, Respondent, v. MARCO A. FERNANDEZ, Appellant.	E039388 (Super.Ct.No. RFL036644) **OPINION**

APPEAL from the Superior Court of San Bernardino County. John A. Crawley, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed.

Thomas George Key; and Michael R. Harlin for Appellant.

Law Offices of Tuckerman & Thompson and Daniel W. Rinaldelli for Respondent.

This action involves a dispute of the buy-out price of the family home between former spouses, appellant Marco A. Fernandez (Marco) and respondent Tonya Fernandez

(Tonya). Marco appeals from the trial court's order that ruled Tonya would have the option to exercise her first right of refusal of the purchase of the family home at $850,000. He makes several claims concerning the valuation of the home. We will not reach these issues because, for reasons that we will explain, the order of October 17, 2005, is nonappealable, and the record on appeal is inadequate for appellate review. We will therefore dismiss the appeal.

I

FACTUAL AND PROCEDURAL BACKGROUND

In or about March 2003, Tonya and Marco separated and filed for dissolution of marriage. Since fall of 2003, Tonya resided exclusively in the family home.

On July 22, 2004, a bifurcated trial was held on the issue of disposition of the property. After testimony from experts for both parties, the trial court ordered that if there was no stipulation on the sale of the residence by August 1, 2004, the residence was to be listed with a "licensed multipal [*sic*] listing agent at $850,000" until sold. (Capitalization omitted.) The court also ordered that if the residence was not sold "after 30 days the price shall be reduced by $25,000.00 and $25,000.00 every 30 days thereafter until sold. Either party shall have right of first refusal. If neither party desires or does not qualify, the residence shall be sold and the proceeds placed in an interest bearing trust account" with Tonya's counsel. (Capitalization omitted.)

In August 2004, Marco hired a listing agent, George Guerrero of Century 21 King Realtors, to represent him in the sale of the family home. On August 20, 2004, Marco

signed a listing agreement and requested that Tonya sign it. Tonya refused to sign it. On September 21, 2004, Marco sought an ex parte application requesting that the court authorize the clerk of the court to sign the listing on Tonya's behalf. The court denied the ex parte request and set a hearing on the issue for November 29, 2004.

Apparently, on or about September 21, 2004, Tonya signed a listing agreement with real estate agent Paul Kennedy of GMAC Park Place Realty. Marco declared that he refused this listing agent because the listing had no termination date.

On November 29, 2004, the trial court reaffirmed the order for the listing of the residence for sale and ordered Tonya to sign the residential listing agreement forthwith. The court also noted that if Tonya did not sign the residential listing agreement, the clerk of the court was ordered to sign it on Tonya's behalf.

On November 30, 2004, Marco's counsel sent a proposed order of the November 29 hearing to Tonya's counsel. The letter, dated November 29, 2004, stated, "Enclosed is the Order After Hearing from today's OSC hearing. In the event you do not sign the same within ten days or submit objections, I will submit it to the court for signature. [¶] Also enclosed is the listing agreement for your client to sign. If she does not sign it within ten days, I shall submit it to the court for the Clerk's signature."

In early December 2004, Tonya placed an advertisement for the sale of the residence in the multiple listing service (MLS). In the property description section, it was noted, "DIVORCE FORCES SALE OF HOME. OWNER'S [*sic*] HAVE FIRST RIGHT OF REFUSAL PER COURT ORDER. . . . BIG DOG INSIDE HOUSE NOT KNOWN

TO BITE SHOWN BY APPOINTMENT ONLY." Guerrero informed Marco that this MLS listing was not generated by him (Guerrero) and that the listing would not likely help in the sale of the home. Indeed, Tonya's agent Kennedy informed Guerrero that when a prospective buyer was viewing the home, Tonya informed this prospective buyer of the first right of refusal, and the prospective buyer walked out of the home. In addition, Tonya informed other prospective buyers to make a "low-ball offer" so she could exercise her first right of refusal to buy the home.

As Tonya did not sign Marco's listing agreement, it was submitted to the court. On or about December 15, 2004, the clerk of the court signed the listing agreement on behalf of Tonya. However, the listing was to expire by the terms of the agreement on December 20, 2004.

Guerrero met with Tonya regarding the sale of the home. Tonya had refused to allow Guerrero to place either a for sale sign in the front of the home or a lock box on the home. In December 2004, Guerrero showed the home. According to Guerrero, the house was very messy, and Tonya appeared hostile to the potential buyer.

On January 14, 2005, Marco executed another listing agreement with Century 21 King Realtors. According to Marco, he forwarded this new listing agreement to Tonya, but the agreement was never returned nor signed by her.

On February 5, 2005, an offer was made to purchase the property for $800,000 by a Joyce Thomas contingent upon an inspection of the property and approval of the interior of the home. By its terms, the offer was to expire on February 7, 2005.

Guerrero thereafter spoke with Tonya. According to Guerrero, when he advised Tonya of Thomas's offer, Tonya stated, "Oh good. I can finally buy my house." When Guerrero asked Tonya about seeing the inside of the house, Tonya giggled. Guerrero declared that the manner in which Tonya giggled left him with an impression of "as if that's going to happen." Guerrero claimed that Tonya did not give him authority to show the property, and to his knowledge the property was never shown to Joyce Thomas. Thomas's agent and Thomas attempted to inspect the interior of the home, but although someone was home, no one answered the door.

In order to preserve Thomas's offer and continue negotiations, Marco made a counteroffer on February 9, 2005, of $850,000 to Thomas with the same contingency as offered by her.

On February 16, 2005, Marco received an offer from Tonya and apparently Tonya's new husband, Robert E. Bremser, for the purchase of the home for $800,001.[1] The offer was initialed and signed by Tonya and Bremser on February 10, 2005.

On August 10, 2005, Tonya filed an order to show cause to compel Marco to sign an interspousal transfer deed for the property.

On October 5, 2005, Marco filed his responsive declaration to Tonya's order to show cause. Marco sought for the house to be listed again at $850,000 but without the

[1] The offer states, "THIS IS AN OFFER FROM ROBERT E. BREMSER, TONYA Z. BREMSER ("Buyer")."

first right of refusal by either party. He also requested that, pending the sale of the home, Tonya be ordered to move from the residence and that it be left vacant.

Tonya filed an untimely reply to the responsive declaration on October 13, 2005.

The hearing on Tonya's order to show cause was held on October 17, 2005. At the hearing, Tonya's counsel objected to some aspects in Marco's responsive declarations as hearsay and speculation. Tonya's counsel thereafter reiterated the court's initial order to list the home for $850,000 with the parties to have the first right of refusal. Counsel then pointed out that Tonya had made an offer and that Marco's actions "sabotag[ed] any sort of sale purchase" by Tonya. Counsel further maintained that the court had made a final order for the sale of the home a year previous, and since no appeal had been taken from that order, the court must enforce that order. Counsel further argued that Tonya had made an offer to purchase the home for $850,000, no response had been received from Marco, Marco had initially made a counteroffer for the sale of the home to Thomas for $850,000, and he was willing to sell the home for that amount.

Marco's counsel replied that Tonya owed a fiduciary duty to Marco to sell the community property with the maximum value under Family Code section 721 and that the court had the authority to change its order based on equity, considering the value of the home as of October 2005 had increased. Counsel noted that if a receiver was appointed, the receiver would state that, based upon a market survey of the home as of October 2005, the home should be listed for higher than $850,000.

Tonya's counsel countered by stating that Marco did not request a receiver in his responsive pleading; he merely asked that the house be placed back on the market for $850,000 without a right of first refusal. Counsel again reiterated that the court must stand by its initial order.

The trial court noted that Tonya was initially attempting to buy the community interest in the residence "for less than the fair market value." The court also noted, "[Marco] may or may not be truly trying to have the residence sold for more than fair market value, but he was entitled to, I believe, and it certainly wasn't an unreasonable request that the full fair market value be utilized in determining and awarding to him his community property equity. [¶] That was the intent of the order that I made in July of '04. It was codified into a formal order in November of '04. It's absolutely true that the responsive pleadings filed indicating that [Marco] made his own offer on behalf of a potential buyer for $850,000 as opposed to $801,000. [¶] The bottom line is the most equitable way of meeting the expectations of the parties and their respective fiduciary relationships in my opinion and is going to be my order is as follows: [¶] One, [Tonya] may purchase the real property and residence for the sum of $850,000 conditioned upon the following: No .1, that she has an escrow opened within 30 days; No. 2, that barring unforeseen circumstances or lack of cooperation by [Marco] that escrow be closed within 90 days. If [Tonya] is unable to qualify or unable to open an escrow as indicated, then the Court will appoint B.W. Garvin as the Court's receiver. Mr. Garvin will be authorized to obtain an authorized listing service to list the residence at full fair market

value. Each party will be ordered to cooperate with Mr. Garvin in effectuating the listing; each party will be ordered to cooperate with Mr. Garvin in showing the residence. The residence shall be maintained in good repair and neat and clean and in a showable condition. [¶] The fees and costs from Mr. Garvin will be advanced from the proceeds of the sale of the residence. The Court will reserve jurisdiction over reallocation of those fees and costs, and Mr. Garvin, as the Court's receiver, will obviously be empowered to bring any Orders to Show Cause or any motions necessary to effectuate this order including if necessary the repair, renovation, showing of the residence or ultimately the removal of [Tonya] from the residence if necessary."

On November 21, 2005, Marco filed his notice of appeal, challenging the court's October 17, 2005, order allowing Tonya to purchase the home for $850,000.

II

DISCUSSION

Marco challenges several aspects of the trial court's order. First, he asserts the court erred in failing to remedy Tonya's interference with the valuation of the marital home, as she had breached the fiduciary duty by the former spouse in possession of the home. Second, he claims the court erred in allowing Tonya to buy the home for the same price it had been valued at over a year previously. Finally, he argues the court erred in setting the value of the home at $850,000, as there was no evidence to support the $850,000 price at the time of the October 17, 2005, order for sale to Tonya.

Tonya contends these issues are not appealable. She argues they are not properly before this court, as Marco failed to appeal from the July 2004 order in which the court set the value of the home at $850,000, and the October 17, 2005, order is not appealable under Code of Civil Procedure section 904.1 and Family Code section 2555. In the alternative, Tonya asserts Marco's claim of error in the use of the $850,000 figure is waived, and, in any event, his overall contention is unmeritorious.

Initially, we determine whether Marco had to appeal from the July 2004 order as Tonya suggests. The July 2004 order was not an appealable order. (See *In re Marriage of Levine* (1994) 28 Cal.App.4th 585, 589; Code. Civ. Proc., § 904.1, subd. (a)(2).) That order -- directing the parties to place the family home for sale in the amount of $850,000, if there was no stipulation on the sale of the residence by August 1, 2004 -- did not finally determine any property rights. It was an interim order in furtherance of the main issue in the action. Orders that are only preliminary to a determination are interlocutory, and appeals from such orders are normally not permitted. (*In re Marriage of Ellis* (2002) 101 Cal.App.4th 400, 403.) The order of July 2004, on its face, is obviously not a final order and is interlocutory in nature. (See *In re Marriage of Nicholson & Sparks* (2002) 104 Cal.App.4th 289, 291, fn. 1 [nonappealable "partial" judgments left issues concerning the same subject matter still pending].)

Next, we determine if the October 2005 order is appealable. In his brief, Marco asserts, "The sole subject of this appeal is the bifurcated issue of the fair market value of the community residence [citation]." He claims the October 2005 order is appealable

under Code of Civil Procedure section 904.1, subdivision (a)(9) and (10) and Family Code section 2555.

Code of Civil Procedure section 904.1, subdivision (a), provides in pertinent part: "An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following: [¶] . . . [¶] (9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made. [¶] (10) From an order made appealable by the provisions of the Probate Code or the Family Code."

Family Code section 2555 states: "The disposition of the community estate, as provided in this division, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court."

Preliminarily, we note that Marco's reliance on Family Code section 2555 is mistaken. That section does not confer jurisdiction to the appellate court. Rather, that section authorizes a court of appeal to revise the disposition of the community estate, "including those which are stated to be in the discretion of the court," and does not expand the jurisdiction of the court of appeal to hear such matters. Family Code section 2555 provides it is applicable to those provisions under "this division." "[T]his division" refers to Division 7 of the Family Code concerning division of property.

Marco ignores that under the circumstances of this case Family Code section 2025 governs. That section provides: "Notwithstanding any other provision of law, if the court has ordered an issue or issues bifurcated for separate trial or hearing in advance of

the disposition of the entire case, a court of appeal may order an issue or issues transferred to it for hearing and decision when the court that heard the issue or issues *certifies* that the appeal is appropriate. Certification by the court shall be in accordance with rules promulgated by the Judicial Council."[2] (Italics added.) There is no evidence in the record to suggest that Marco sought certification of the lower court's October 2005 order.

In California, the right to appeal is governed wholly by statute. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.) Except as the Legislature provides, the appellate courts have no jurisdiction to entertain appeals. An appealable judgment or order is essential to appellate jurisdiction, and the parties' consent cannot make a nonappealable order appealable. (*In re Marriage of Loya* (1987) 189 Cal.App.3d 1636, 1638.) Hence, the appellate court, on its own motion, must dismiss an appeal from a nonappealable order. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 14, p. 73.)

Neither Code of Civil Procedure section 904.1, the statute defining appealable judgments and orders in marital dissolution proceedings (see *Enrique M. v. Angelina V.*

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[2] Rule 5.180 of the California Rules of Court generally provides that a party may notice a motion asking the court to certify that there is probable cause for immediate appellate review of an order on a bifurcated issue within 10 days after the clerk mails the order deciding the issue. The trial court may issue a certificate of probable cause for immediate appellate review if final resolution of the issue is likely to lead to settlement of the entire case, will simplify remaining issues, will conserve the courts' resources, or will benefit the well-being of a child of the marriage or the parties. If the certificate is granted, a party may file a motion in the Court of Appeal to appeal the decision on the bifurcated issue.

(2004) 121 Cal.App.4th 1371, 1377), nor any other statutory provision authorizes an immediate appeal from intermediate, procedural rulings made in anticipation of trial. The practical effect of allowing immediate separate appeals on issues that are not ultimate issues in the lawsuit engenders costly piecemeal disposition and multiple appeals in a single action. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1073.)

Under the so-called "one final judgment rule," an appeal lies only from a *final judgment*, unless the ruling is otherwise made appealable by statute. (*Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 962-963; *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 560; Code Civ. Proc., § 904.1 subd. (a)(1) [appeal may be taken from "a judgment" other than "an interlocutory judgment"].)

A judgment is "final" for appeal purposes if it decides the parties' rights and duties and effectively *terminates the litigation*. "'"[W]here anything further in the nature of judicial action on the part of the court is essential to a final determination of the right of the parties, the decree is interlocutory [and thus not appealable]." [Citation.]' [Citation.]" (*In re Marriage of Griffin* (1993) 15 Cal.App.4th 685, 689 [minute order valuing community property not appealable where spousal support and other property issues remained to be tried]); see also *In re Marriage of Hafferkamp* (1998) 61 Cal.App.4th 789, 793-794 [no right of appeal from court's tentative decision]; *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651 ["[d]espite the inclusive

language of Code of Civil Procedure section 904.1, subdivision (b), not every postjudgment order that follows a final appealable judgment is appealable"].)

The appellate court in *In re Marriage of Levine*, *supra*, 28 Cal.App.4th at page 589 determined that in a marital dissolution action a postjudgment order of the trial court finding that the court had the authority to approve the sale of certain assets and resolve any sale-related issues was not an appealable order. The appellate court ruled that "[s]uch an order is one which is 'preliminary to later proceedings' within the meaning of *Lakin v. Watkins Associated Industries*, *supra*, 6 Cal.4th at pages 654, 656." (*Ibid*.) Moreover, the court found that because the order was "not sufficiently final, it was not appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(2), as a[n] order made after the judgment . . . ." (*Ibid*.)

An order finding a community interest in the husband's health insurance subsidy benefits and the authority to divide that asset was similarly deemed a nonappealable order. (*In re Marriage of Ellis*, *supra*, 101 Cal.App.4th at pp. 402-403.) The appellate court reasoned that "the order determines that the trial court has authority to evaluate and divide the medical subsidy, but it is only preliminary to *actually* doing so." (*Id*. at p. 403.) Further, "[t]he order could be reviewed upon appeal from the subsequent final judgment on reserved issue that actually divides the asset. In other words, this purported appeal is an 'interlocutory' appeal, which normally is not permitted." (*Ibid*.)

An order denying a motion to correct a minute order is also a nonappealable order. (*In re Marriage of Griffin*, *supra*, 15 Cal.App.4th at pp. 686, 689.) There the appellate

court found that the order was interlocutory because issues of spousal support and other property issues remained to be tried, and further judicial action was essential to a final determination of the parties' rights. (*Id*. at p. 689.) The appeal was dismissed because the appellate court concluded that "[t]he issues raised herein can be resolved, if necessary, following the entry of final judgment." (*Ibid*.)

In the present case, we find that the "Order after Hearing on October 17, 2005," is likewise preliminary to later proceedings and therefore interlocutory and nonappealable. The trial court ordered that Tonya "may" purchase the real property for $850,000 on the following conditions: "1) Escrow to open within 30 days. 2) Barring any unforeseen circumstances escrow should close within 90 days. 3) If unable to open escrow Court will appoint B.W. Garvin as the Court's receiver. The Court's receiver is to obtain a [*sic*] authorized listing service to list the property. Parties are authorized to cooperate with the receiver. Residence shall be maintained. Receiver's fees to be advanced from the proceeds from the sale of the residence." The court reserved jurisdiction on the fees and costs of the receiver and also empowered the receiver to make any repairs and renovation and to show the residence. The court also reserved jurisdiction on the issues of attorney fees and costs and noted, "The Court always has jurisdiction to enforce its orders," when Tonya's counsel inquired, "Is there jurisdiction over the sale or the disposition?" In other words, the order expressly provides that further judicial action is intended.

However, California case law recognizes another exception to the one final judgment rule that relates to interlocutory orders that finally determine property rights.

"[D]espite the 'one final judgment rule,' it is established that an interlocutory judgment, not expressly made appealable by statute, is nevertheless appealable to the extent that it requires as a collateral matter, the *immediate* payment of money, or the performance forthwith of an act [citations], *or has the effect of a final determination of property rights* [citations]. When such an appeal is taken the litigation of the main issues continues to a final judgment. [Citations.]" (*Stockton v. Rattner* (1972) 22 Cal.App.3d 965, 968, first italics added; see also *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368 [appeal from temporary spousal support order]; cf. *Spencer v. Spencer* (1967) 252 Cal.App.2d 683, 690 ["where . . . a stranger to the main action is made a party to the action on an issue collateral to, independent of, and severable from the issues of the main action, a decision which finally determines the respective rights of the parties, leaving no further judicial acts to be done by the court in regard thereto, is appealable even though it may not 'technically' direct the performance of an act by or against appellant"].)

We find this exception inapplicable here. True, the order being appealed from has the effect of a final determination of the parties' right to real property, the parties' former house. But the exception requires something more -- that the order being appealed from relate to a collateral matter. (See, e.g. *Stockton v. Rattner*, *supra*, 22 Cal.App.3d at p. 968.) In determining whether an order is collateral, "'the test is whether an order is "important and essential to the correct determination of the main issue." If the order is "a necessary step to that end," it is not collateral. [Citations.]' [Citation.]" (*Lester v. Lennane*, *supra*, 84 Cal.App.4th at p. 561.)

Here, the trial court specifically reserved jurisdiction on certain issues relating to the sale of the property if certain conditions were not met and on the issue of attorney fees and costs. In addition, the court implicitly reserved jurisdiction on the allocation of funds from the sale of the home as well as claims of reimbursements and charges. The order determining the parties' property right to the house were "necessary step[s]" in determining the amounts of reimbursement they owe or are owed in connection with the house. (See *Lester v. Lennane*, *supra*, 84 Cal.App.4th at p. 561.) In other words, the outstanding reimbursement issues are not distinct and severable from the trial court's determination that Tonya may purchase the home. The order is interlocutory because it anticipates a final order dividing the community asset and is "only preliminary to *actually* doing so." (*In re Marriage of Ellis*, *supra*, 101 Cal.App.4th at p. 403.) As such, the order is not collateral. Because the October 17, 2005, order is not collateral, we conclude it is not appealable as an interlocutory order that *finally* determines property rights.

"'[A] mere ruling on a bifurcated issue' . . . is not immediately appealable absent trial court certification." (*In re Marriage of Macfarlane & Lang* (1992) 8 Cal.App.4th 247, 256, fn. 9; see also *In re Marriage of Doherty* (2002) 103 Cal.App.4th 895, 898 [an interlocutory order that characterizes property is not appealable but is reviewable on appeal from the final judgment that divides the property, among other assets of the marriage].) No such certification occurred here. (See Fam. Code, § 2025; Cal. Rules of Court, rule 5.180.) Accordingly, we lack jurisdiction and must dismiss the appeal.

Furthermore, we decline to exercise our discretion to treat the appeal as an extraordinary writ. (Cf. *In re Marriage of Doherty, supra*, 103 Cal.App.4th at p. 898 [both parties asked appellate court to consider the merits of interlocutory appeal]; *In re Marriage of Ellis*, *supra*, 101 Cal.App.4th at pp. 403-405 [both parties asked that premature appeal be treated as a writ petition to permit a review of the merits].) "Routine granting of requests to treat improper appeals as writs where there are no exigent reasons for doing so would only encourage parties to burden appellate courts with reviews of intermediate orders." (*Estate of Weber* (1991) 229 Cal.App.3d 22, 25.) "Strong policy reasons underpin the one final judgment rule, and the guidelines for 'saving' appeals from nonappealable orders. The interests of clients, counsel, and the courts are best served by maintaining, to the extent possible, bright-line rules which distinguish between appealable and nonappealable orders. To treat the instant appeal as a writ application would obliterate that bright line and encourage parties to knowingly appeal from nonappealable orders, safe in the knowledge that their appeal will be 'saved by the appellate courts.' We cannot condone or encourage such practice." (*Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1455-1456, fn. omitted.)

For these reasons, we conclude that the October 17, 2005, order is nonappealable, and we will dismiss Marco's appeal.

In addition, the record on appeal is inadequate in respect to Marco's challenge to the valuation of the home. A judgment or order of the lower court is presumed correct,

and an appellant must affirmatively show error. (Code Civ. Proc., § 475[3]; *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) Thus, "[i]t is axiomatic [that] it is appellant's responsibility to provide an adequate record on appeal." (*Lincoln Fountain Villas Homeowners Assn. v. State Farm Fire & Casualty Ins. Co.* (2006) 136 Cal.App.4th 999, 1003-1004, fn.1.) "[F]ailure to do so 'precludes adequate review and results in affirmance of the trial court's determination.'" (*Ibid*., quoting *Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, fn.1.)

The record on appeal in the present case does not contain the reporter's transcript of the July 2004 order in which the court, after hearing testimony from experts, determined the value of the home to be $850,000. Furthermore, the record does not contain any documentation concerning the value of the home as of the July 2004 order; neither does it contain any documentation showing the value of the home as of October 2005 had increased or that the home was not valued at a "fair market value."[4] The record

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[3] Code of Civil Procedure, section 475, provides: "The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown."

[4] The only evidence was a hearsay statement from Agent Guerrero, who declared: "Based on my direct knowledge of the area, I believe if the residence were listed today [October 5, 2005], it should list for $900,000.00 plus. I have seen

[footnote continued on next page]

on appeal is therefore inadequate for appellate review, and that inadequacy alone, even if this court were to determine Tonya breached her fiduciary duty, is grounds to affirm the trial court's order of October 17, 2005.

III

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

GAUT
J.

[footnote continued from previous page]
comparable properties in the neighborhood with smaller lots being listed for $925,000.00. *But to do this, the residence should be vacant and should be in good condition*."